

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent No. 7,401,327)	
)	
Inventor: Robert H. HALSTEAD, Jr. et al.)	Group Art Unit: 2193
)	
Issued: July 15, 2008)	Examiner: Insun Kang
)	
For: SYSTEM AND METHOD)	
SUPPORTING PROPERTY)	
VALUES AS OPTIONS)	Confirmation No.: 1846
)	

Mail Stop Petition

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

**PETITION UNDER 37 C.F.R. § 1.183 FOR WAIVER
OF THE REQUIREMENT UNDER 37 C.F.R. § 1.705(d)**

Pursuant to 37 C.F.R. § 1.183, Patentee petitions the Commissioner to waive the requirements of 37 C.F.R. § 1.705(d) that any request for reconsideration of the patent term adjustment indicated in an issued patent be filed within two months of the date the patent issues. The required fee of \$400.00 for the petition under 37 C.F.R. § 1.183 is enclosed.

The U.S. Patent Trademark Office (PTO) issued the above-referenced U.S. Patent No. 7,401,327 (the '327 patent) on July 15, 2008, with a patent term adjustment (PTA) of 564 days, which was corrected to 198 days. Subsequently, on September 30, 2008, U.S. District Court for the District of Columbia ruled in *Wyeth v. Dudas* that the PTO had made an error in the manner it determined PTA. Specifically, the Court's decision relates to situations in which separate time periods of PTA accrue due to PTO

examination delay and those time periods do not overlap. The Court ruled that in such situations, the PTA should be determined as the sum of the term adjustments of the respective separate time periods, rather than the greater one of the term adjustments, the latter practice being the PTO's manner of PTA determination used to date.

Patentee requests waiver of Rule 1.705(d) to permit filing and consideration of the accompanying Determination of Patent Term Adjustment - Post Grant, in which patentee requests a change in the PTA based on determination in a manner consistent with the Court's decision referred to above.

This Petition is accompanied by the required petition fee of \$400.00, as set forth in 37 C.F.R. § 1.17(f). If there are any other fees due in connection with the filing of this Petition, please charge such fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: January 9, 2009

By: 

Maura K. Moran
Reg. No. 31,859
(617) 452-1657

Enclosures

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent No. 7,401,327)	
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Inventor: Robert H. HALSTEAD, Jr. et al.)	Group Art Unit: 2193
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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

DETERMINATION OF PATENT TERM ADJUSTMENT - POST GRANT

Applicant requests reconsideration of patent term adjustment pursuant to the Federal District Court's decision in *Wyeth v. Dudas*. This request is filed within 180 days of the issuance of the patent on July 15, 2008. A petition under 37 C.F.R. 1.183 is filed herewith, requesting an extension to file a Request for Patent Term Adjustment to January 9, 2009.

The Office issued the subject U.S. Patent No. 7,401,327 (the '327 patent) with a patent term adjustment of 564 days, which was corrected to 198 days. The First Office Action issued on January 22, 2004, and the first RCE was filed on December 15, 2005. The '327 patent issued on July 15, 2008. The three year pendency date for determination of patent term adjustment is January 12, 2004, thereby creating **an additional PTO delay of 693 days** (calculated as 703 days from January 12, 2004 to December 15, 2005 minus 10 days from January 12, 2004 to January 22, 2004).

In view of the decision of the Federal District Court for the District of Columbia in *Wyeth v. Dudas* on September 30, 2008, patentee submits it is entitled to a total patent term adjustment of 891 days of patent term adjustment. Applicant notes that the '327 patent is subject to a Terminal Disclaimer in view of U.S. Patent Nos. 7,340,720 and 7,373,639.

As required by 37 C.F.R. § 1.705(b)(1), this application is accompanied by a fee for \$200.00 to cover the required fee. If there are any other fees due in connection with the filing of this request, please charge them to Deposit Account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: January 9, 2009

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